

**To:** Kivowitz, Sharon[Kivowitz.Sharon@epa.gov]  
**Cc:** Doyle, James[Doyle.James@epa.gov]  
**From:** Lieber, Thomas  
**Sent:** Fri 8/19/2016 9:20:04 PM  
**Subject:** RE: email to Dan Riesel

Sharon:

I'm having trouble accessing old emails. Do you have the summary j motions by Magistrate Lindsay dated 10/24/14 and 3/31/15? Thanks.

Tom

**From:** Lieber, Thomas  
**Sent:** Tuesday, July 12, 2016 4:53 PM  
**To:** Kivowitz, Sharon <Kivowitz.Sharon@epa.gov>  
**Cc:** Doyle, James <Doyle.James@epa.gov>  
**Subject:** RE: email to Dan Riesel

Sharon:

Hope all's well.

The order Riesel sent indicated that the judge was dismissing claims against all of the pufahl parties, but your below message indicates only Lincoln. I think the judge was relying on 3 decisions. Please advise.

Tom

**From:** Kivowitz, Sharon

**Sent:** Wednesday, July 06, 2016 11:37 AM  
**To:** Lieber, Thomas <[Lieber.Thomas@epa.gov](mailto:Lieber.Thomas@epa.gov)>  
**Cc:** Doyle, James <[Doyle.James@epa.gov](mailto:Doyle.James@epa.gov)>  
**Subject:** email to Dan Riesel

Tom,

Below is the email you asked me to draft. The decision is pretty straight forward. The court was asked to determine if as a dissolved corporation, Lincoln could be sued. Starting with a 2007 2<sup>nd</sup> C. decision in Marsh v. Robinson, which found that CERCLA does not preempt NY State corporation law, the court went on to determine that NY corp law, and the case law interpreting it, states that a dissolved corporation cannot be sued once its affairs are fully adjusted and that although NY State law is silent on a time period for winding up affairs, that time is not indefinite as the Frost Street parties argued. The court determined that 3 decades is long enough to determine that the affairs of Lincoln had been fully wound up and adjusted. Let me know if you want more detail about the opinion.

Sharon

*Dear Mr. Riesel:*

*I am in receipt of your emails dated \_\_\_\_\_ and July 2, 2016, regarding the CERCLA liability of your client Lincoln Processing Corp. ("Lincoln") at the New Cassel/Hicksville Groundwater Contamination Superfund Site ("Site"). As you are aware, EPA sent a notice letter to Lincoln, among others, in July 2014. Since EPA issued the notice letter, you provided us with Magistrate Judge Gary R. Brown's March 23, 2016 decision granting summary judgment to Lincoln in an action brought by other PRPs at the Site. Summary Judgement was granted on the grounds that as a dissolved corporation which has fully adjusted its affairs, Lincoln can no longer be sued under New York State Law. In its opinion, Magistrate Judge Brown noted that in its 2007 decision in Marsh v. Rosenbloom, 499 F.3d 165, the Second Circuit found that CERCLA does not preempt state statutes that limit a party's capacity to be sued. As such, EPA no longer considers Lincoln a PRP at the Site.*

*Should you wish to discuss this matter further, please contact me (by return email or by telephone at 212-637-3158), or James Doyle (at [doyle.james@epa.gov](mailto:doyle.james@epa.gov) or by telephone at 212-637-3165), or Sharon Kivowitz (by email at [kivowitz.sharon@epa.gov](mailto:kivowitz.sharon@epa.gov) or by telephone at 212-637-3183).*

Sharon E. Kivowitz

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